

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO: 3:04CV430**

RACHEL DIANE GORTON,)
Plaintiff)
vs.) _____ **ORDER**
DANA SPICER d/b/a)
WIX CORPORATION,)
Defendant.)
_____)

THIS MATTER IS BEFORE THE COURT in preliminary response to the “Motion to Dismiss Plaintiff’s Complaint” (Document No. 6) and corresponding “Defendant’s Memorandum of Law in Support ...” (Document No. 7), both filed by Dana Spicer d/b/a Wix Corporation (“Wix”); the “Plaintiff’s Memorandum in Opposition ...” (Document No. 11), filed October 25, 2004 by Rachel Gorton; and the “Defendant’s Reply Brief in Support ... ” (Document No.), filed November 8, 2004 by Wix.

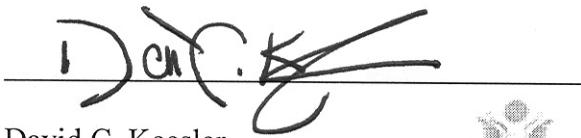
After careful review of the papers filed by both parties, the Court is of the opinion that it would benefit from additional briefing in this matter. Wix argues in part that Ms. Gorton’s Title VII claim should be dismissed because it was not brought within ninety days of her receipt of the right to sue letter. The parties did not analyze the impact on this issue of the recent opinion in Lassiter v. LabCorp Occupational Testing Serv., Inc., 337 F. Supp. 2d 746 (M.D. N.C. 2004). The supplemental briefs of the parties should address the Lassiter opinion, as well as the opinion in Cannon v. Kroger Co., 647 F. Supp. 82 (M.D. N.C. 1986), Arbia v. Owens-Illinois, 2003 WL 21297330 (M.D. N.C. 2003) (unpublished), and Baldwin County Welcome Wagon v. Brown, 466 U.S. 147 (1984).

Using those opinions as guidance, the parties should address at least the following two issues:

1. Did filing the motion for additional time with the state court clerk and causing the issuance of a summons under Rule 3 of the North Carolina Rules of Civil Procedure constitute the timely bringing of an action within the ninety day requirement of Title VII?
2. If not, is this an appropriate case for equitable tolling under the criteria set out in the Baldwin County Welcome Wagon case?

IT IS, THEREFORE, ORDERED that the parties shall submit supplemental briefs in this matter consistent with the above. As the movant, Wix shall file its supplemental brief within fifteen days of the entry of this Order. Ms. Gorton shall file her response within five days after Wix files its supplemental brief.

Signed: September 21, 2005



David C. Keesler
United States Magistrate Judge

